

Message Text

CONFIDENTIAL

PAGE 01 BERLIN 00415 061655Z

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ACTION EUR-25

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C O N F I D E N T I A L BERLIN 0415

E.O. 11652: GDS

TAGS: PGOV, GE, GW, WB

SUBJECT: INGRID BRUECKMANN CASE

REFS: A) BONN 3526; B) BERLIN 409

1. BERLIN MISSIONS HAVE DRAFTED FOLLOWING BK/L WHICH
WE WOULD BE PREPARED TO HAVE ISSUED UPON RECEIPT OF AUTHORIZATION.

"SUBJECT: COMPETENCE OF THE FEDERAL CONSTITUTIONAL COURT

"TO THE GOVERNING MAYOR, BERLIN, DEAR MR. GOVERNING MAYOR,

"IT HAS BEEN BROUGHT TO THE ALLIED KOMMANDATURA'S
ATTENTION THAT THE INGRID BRUECKMANN CASE HAS BEEN APPEALED
TO THE FEDERAL CONSTITUTIONAL COURT, AND THAT THE COURT
HAS INFORMALLY REQUESTED BERLIN OFFICIALS TO PROVIDE IT
WITH DOCUMENTS RELATED TO THE CASE. THE ALLIED
KOMMANDATURA ACCORDINGLY REFERS TO ITS PREVIOUS
DIRECTIVES WITH RESPECT TO THE CONSTITUTIONAL COURT,
IN PARTICULAR BK/O(52)35 AND BK/L(67)10. IT WILL BE
RECALLED THAT THE LATTER DOCUMENT IN ITS PENULTIMATE
PARAGRAPH STATED:

"THE ALLIED KOMMANDATURA CONSIDERS THAT THE COURT
DOES NOT HAVE JURISDICTION IN RELATION TO BERLIN
AND THAT ACCORDINGLY IT IS NOT COMPETENT TO REVIEW
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PAGE 02 BERLIN 00415 061655Z

EITHER (1) THE CONSTITUTIONALITY OF ACTS OF BERLIN

AUTHORITIES; OR (2) THE CONSTITUTIONALITY OF BERLIN LAWS INCLUDING LAWS TAKING OVER PROVISIONS OF FEDERAL LEGISLATION.'

"IT WILL ALSO BE RECALLED THAT THE LETTER OF THE THREE ALLIED AMBASSADORS TRANSMITTING THE QUADRIPARTITE AGREEMENT OF SEPTEMBER 3, 1971 TO THE FEDERAL CHANCELLOR NOTED SPECIFICALLY THE ALLIED RESERVATIONS ON THE FEDERAL CONSTITUTIONAL COURT IN ELABORATION OF THE RELATIONSHIP BETWEEN THE WESTERN SECTORS OF BERLIN AND THE FEDERAL REPUBLIC SET FORTH IN THE QUADRIPARTITE AGREEMENT.

"THE ALLIED KOMMANDATURA REAFFIRMS ITS VIEWS WITH RESPECT TO THE LACK OF COMPETENCE OF THE FEDERAL CONSTITUTIONAL COURT IN BERLIN MATTERS. AS THE BRUECKMANN CASE IN THE FORM IN WHICH IT WAS BROUGHT BEFORE THE FEDERAL CONSTITUTIONAL COURT MAY INVOLVE ASPECTS OF THE FEDERAL REPUBLIC'S REPRESENTATION OF BERLIN'S INTERESTS BEFORE AN INTERNATIONAL ORGANIZATION PURSUANT TO A TREATY ENTERED INTO BY THE FEDERAL REPUBLIC AND EXTENDED TO BERLIN IN ACCORDANCE WITH ESTABLISHED PROCEDURES, THE ALLIED KOMMANDATURA MAKES THE FOLLOWING ADDITIONAL OBSERVATION. TREATIES OF THE FEDERAL REPUBLIC ARE EXTENDED TO BERLIN SUBJECT TO ALLIED RESERVED RIGHTS AND RESPONSIBILITIES AND PURSUANT TO ESTABLISHED PROCEDURES FOR ALLIED REVIEW. WHERE A TREATY OF THE FEDERAL REPUBLIC IS EFFECTIVE ALSO WITH RESPECT TO BERLIN, THEREFORE, THE FEDERAL GOVERNMENT MAY REPRESENT BERLIN'S INTERESTS ONLY IN A MANNER CONSISTENT WITH THE RESERVED RIGHTS AND RESPONSIBILITIES OF THE ALLIES, INCLUDING THE RESERVATIONS THE ALLIED KOMMANDATURA HAS MADE WITH RESPECT TO THE LACK OF COMPETENCE OF THE FEDERAL CONSTITUTIONAL COURT OVER BERLIN MATTERS. IT IS THE VIEW OF THE ALLIED KOMMANDATURA, THEREFORE, THAT THE FEDERAL CONSTITUTIONAL COURT IS NOT COMPETENT TO REVIEW THE REPRESENTATION OF BERLIN BY THE FRG IN INTERNATIONAL AGREEMENTS AND ORGANIZATIONS.

"THE ALLIED KOMMANDATURA WISHES THE SENAT TO ENSURE THAT THE ABOVE EXPRESSED VIEWS ARE BROUGHT PROMPTLY TO THE ATTENTION OF THE FEDERAL CONSTITUTIONAL COURT. IN SO DOING THE SENAT MAY NOTE ALSO THAT THE ALLIED KOMMANDATURA SPECIFICALLY REFUSED, BY LETTER OF JULY 6, 1973, THE REQUEST
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 BERLIN 00415 061655Z

OF INGRID BRUECKMANN'S COUNSEL FOR AN EXCEPTIONAL RELAXATION OF ITS VIEWS TO PERMIT THIS CASE TO BE REFERRED TO THE FEDERAL CONSTITUTIONAL COURT. THE ALLIED KOMMANDATURA EXPECTS THE SENAT TO ENSURE ALSO THAT NO DOCUMENTS RELATING TO THE INGRID BRUECKMANN CASE ARE DELIVERED TO THE FEDERAL CONSTITUTIONAL COURT BY ANY BERLIN OFFICIAL OR OFFICIAL OFFICE."KLEIN

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